UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 11-0343-DOC(RNBx)   Date: October 20, 2011

Title: MAXINE DERRY ET AL. V. JACKSON NATIONAL LIFE INSURANCE COMPANY

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Julie Barrera	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT   NONE PRESENT

PROCEEDING (IN CHAMBERS):   ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT
DENY AS MOOT PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION [37]

Before the Court is a Motion to Certify Class filed by Plaintiffs Maxine Derry and Russell Hemen ("Plaintiffs") on August 25, 2011. (Dkt. 37).

On August 3, 2011, the Court took under submission Defendant's Motion to Dismiss (Dkt. 24), which was filed on July 8, 2011. *See* Dkt. 34. The Court then granted Defendant's Motion to Dismiss on October 5, 2011, and gave Plaintiffs until October 24, 2011, to amend. Dkt. 63.

Because the Court dismissed Plaintiff's Complaint and the briefing for Plaintiffs' Motion to Certify Class is based on allegations in that dismissed Complaint, Plaintiff's Motion appears to be moot. *See Burke v. United States*, 480 F.2d 279, 281, 480 F.2d 279 (9th. Cir. 1973) ("The request for a class action becomes moot when the merits are determined against the [plaintiff]."); *Kirchgessner v. Wilentz*, 884 F.Supp. 901, 918, 884 F.Supp. 901, 918 (D.N.J. 1995) (denying as moot motion for class certification because plaintiff's claims were dismissed).

Accordingly, the Court ORDERS **Plaintiffs** TO SHOW CAUSE in writing on or before **October 31, 2011**, why their Motion should not be denied as moot. Plaintiff's withdrawal of their Motion will also be deemed a sufficient response to this order to show cause.

Defendants may submit a response on or before **November 2, 2011**.

The Clerk shall serve a copy of this minute order on counsel for all parties in this action.

MINUTES FORM 11 DOC   Initials of Deputy Clerk: jcb
CIVIL - GEN   Page 1 of 1